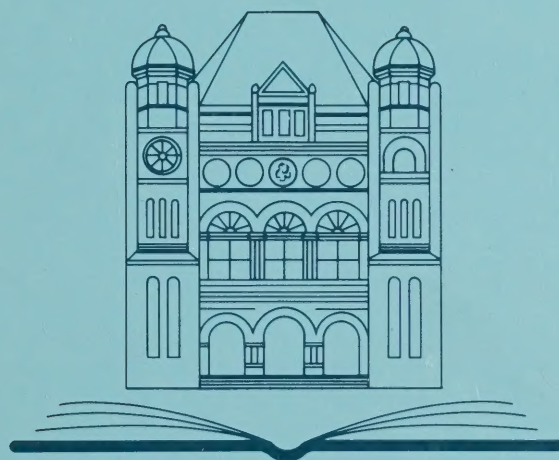


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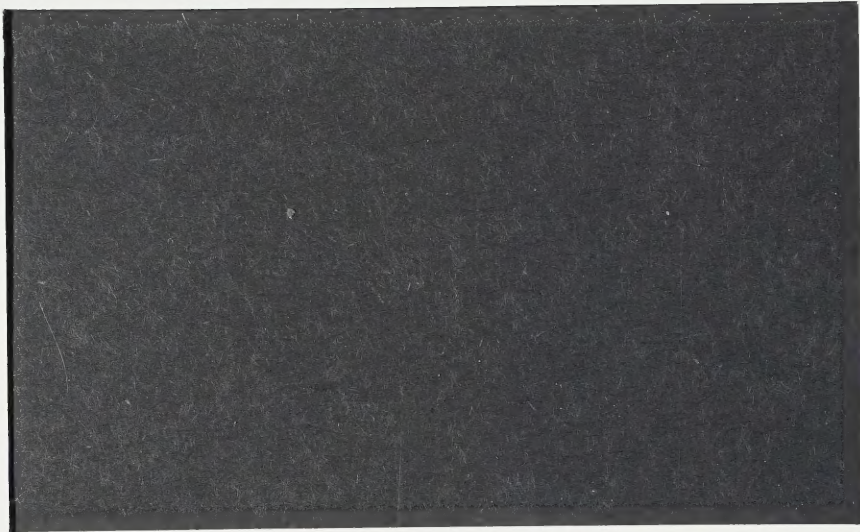
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THE HISTORICAL DEVELOPMENT OF
PUBLIC FUNDING OF ROMAN CATHOLIC
SEPARATE SCHOOLS IN ONTARIO

Current Issue Paper 34



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**THE HISTORICAL DEVELOPMENT OF
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Current Issue Paper 34

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March 1995

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INTRODUCTION

The Province of Ontario at present has two publicly funded school systems: the public school system and the Roman Catholic separate school system. Currently there are 168 school boards including 105 public school boards, 59 separate school boards (58 Roman Catholic boards and 1 Protestant board), and 4 French-language boards.¹ Enrolment figures for the year 1992-1993 included 1,411,382 students in public schools and 604,086 students in Roman Catholic schools, for a total of 2,015,468 students.² In the same year there were 3,551 public schools and 1,609 Roman Catholic schools.³

This paper examines the historical development of public funding for Ontario's Roman Catholic separate schools, including funding changes that occurred with the enactment of the *Education Amendment Act, 1986*⁴ and the *Education Statute Law Amendment Act, 1989*⁵ (Bills 30 and 64 respectively). The goals are to provide background information on the extension of provincial funding through all separate secondary school grades, summarize current separate and public school funding arrangements and highlight any remaining disparities in Ontario.

HISTORICAL DEVELOPMENT OF ROMAN CATHOLIC SEPARATE SCHOOL FUNDING

Pre-Confederation Era

The first Roman Catholic schools in Upper Canada were started by Bishop A. Macdonell, Upper Canada's first Roman Catholic bishop. His pressure on the government for schools for Roman Catholic children resulted in the inclusion of provisions in the *Education Act* of 1841 allowing Roman Catholic schools a share of Legislative funds.⁶

During the tenure of Macdonell's successor, Bishop Michael Power, much of the early framework of separate school legislation was secured. The *Education Act* of 1843 continued to include separate schools as part of the common school system. Under the provisions of this Act, regardless of whether the teacher of the school was Roman

Catholic or Protestant, the members of the opposite denomination had the right, upon application of ten or more resident freeholders or householders in the district, to establish a school and to staff it with a teacher of their particular religious persuasion.

Such applications were to be delivered to the superintendent of the township, town or city and had to include the names of three trustees. After complying with the requirements of the Act, the newly established school was to receive a share of the public appropriations according to the number of children in attendance. Separate schools were subject to the same rules as common schools.

Major conflict arose in the 1850s when Bishop Armand de Charbonnel, then the Roman Catholic Bishop of Toronto, clashed openly and bitterly with Methodist Egerton Ryerson, the Chief Superintendent of Education, over the status of Catholic separate schools. Ryerson originally had been against separate schools, but in 1858 he declared that "existing separate school legislation was founded on justice and should remain inviolate."⁷ During his tenure, a supplementary *Education Act* was passed in 1853 which freed separate school supporters from paying public school taxes and authorized them to elect their own trustees. However, there was a limitation. Public schools could employ Roman Catholic teachers and, under the terms of the Act, Catholic separate schools could not be opened in areas where the public school already had Catholic teachers on staff.⁸

The *Tache Act* of 1855 remedied some deficiencies. Separate school supporters no longer had to make an annual declaration that they were separate school supporters, nor did they have to make contributions at least equal to what they would have to pay if they had remained public school supporters. In addition, during this period separate schools established their right to requisition municipal funds as did public school boards.

Ryerson tried in vain to have common school boards designate appropriate schools for denominational pupils. The problem was eventually resolved in 1863 with the passage of the *Scott Bill* providing for a single school board for a whole municipality. It further provided:

. . . that Roman Catholic ratepayers could withdraw their support from the local public school and establish a school of their own, for which taxes would be assessed and which could receive government grants. Supporters of the Catholic Separate school would be exempt from public school rates.⁹

The *Scott Bill* formed the basis of Ontario Roman Catholic separate school funding subsequently vested in these separate schools by Section 93 of the *British North America Act* (renamed the *Constitution Act, 1867*).¹⁰

Post-Confederation Era

By 1879 further privileges had been extended to the separate schools and their supporters. The most important of these included provisions to: set up Roman Catholic model schools to train teachers for the Third Class Certificate with rights of representation on the County Board of Examiners; vote at separate school elections even if one lived outside the municipality in which the separate school was located (but within three miles of the school); give permission to an owner of vacant lands in any municipality to have his land assessed for the support of separate schools without regard to location of residence of the owner; and appoint Roman Catholic separate school inspectors for separate schools (1882).¹¹

The norm was to have the first school in a neighbourhood as a public school even though it might have many or exclusively Roman Catholic pupils, trustees or teachers. In 1899, however, provision was made for separate schools to be formed in an area not organized into a township even though there was no public school originally in existence in that area.¹² Protestant minorities could set up their own separate schools.

Until the 1880s the bishops were spokesmen for the Catholic community on educational matters. The laity became increasingly involved toward the end of the 19th century over the issue of French language schools. The language issue in many ways became an extension of the separate school question.¹³

Bilingual Schools Issue

Although the French population had increased markedly from the 1850s to the 1880s, there was an English language requirement exacted for all teachers applying for a certificate to teach in Ontario in 1885.¹⁴ There was also a requirement for the use of English language readers in all schools.¹⁵ By 1887 English was being taught in every French separate school.¹⁶ However, considerable disparity among schools in teaching English gave rise to concerns. The bilingual schools issue became thorny, representing two areas of conflict: that between French-speaking and English-speaking Catholics and that between French Canadian and Ontario Protestant sympathizers.

An investigation was commissioned by the Province due to growing controversy over the condition of English-French schools. A Report (known as the Merchant Report) was submitted in February 1912. The Report recommended that "French be the language of instruction in the primary grades, but . . . English be introduced gradually . . . to replace French as the main language by the third Form" and, due to anticipated bilingualism difficulties, the training should be extended a further year.¹⁷ This recommendation met with substantial opposition from Protestant Orange supporters. The then Progressive Conservative Premier, James Whitney, confirmed the government would foster English instruction. The following policy statement was made in the Legislature:

. . . instruction in English shall commence at once upon a child entering school, the use of French as the language of instruction and of communication to vary according to local conditions upon the report of the supervising inspector, but in no case to continue beyond the end of the first form.¹⁸

Shortly thereafter this policy statement was embodied in the controversial 1912 order, *Instructions No. 17*, known by most as *Regulation 17*.

The bilingual schools controversy had created a serious split between Ontario's French and English Catholics. In distracting the focus of Catholic leaders, it deterred them from

attempts to obtain desired amendments to legislation which would have improved the status and financial position of Roman Catholic separate schools.

Grade Levels in Separate Schools

At the turn of the century, there was much confusion about the grade level which Roman Catholic separate schools were able to legally teach. In Toronto some had operated complete high schools openly for several years. In 1915, a directive from the Minister of Education was sent to all school boards to inform them that Form 5 (Grade 10) was the legal grade level cut-off.¹⁹

Continuation classes (Grades 9 and 10) were added originally in the late 1890s to provide some post-elementary education to those in areas remote from high schools. Prior to a test case brought by the Township of Tiny, the continuation classes operated by separate school boards were treated as elementary grades for grant purposes.²⁰

The Tiny Township trustees' test case was appealed all the way to the Judicial Committee of the Privy Council, the final avenue of appeal from a decision of a Canadian Court at the time. The trustees sought a judgment in favour of the extension of the separate school system right through all secondary school grades. However, on June 12, 1928, the Judicial Committee of the Privy Council upheld the original decision of the Ontario Supreme Court dismissing the Catholic school trustees' case. The effect of the ruling was to confirm that the Ontario government had full power under the existing law to regulate separate schools, although it could not abolish separate schools, and that separate school supporters had no legal claim to financial support for any secondary schools they might erect, nor to exemption from support of secondary schools open to the public and operating under public regulation.²¹

Growing Enrolment and Financial Problems

The major problem facing separate school boards for the next 40 years was that of financial survival. From the time of formation of the Catholic Taxpayers Association in

1931, the Catholic laity continued to play a major role in lobbying for amendments to the *Assessment Act* to provide for a share of corporations' and public utilities' taxation for separate schools. Orange supporters counter-lobbied these requests. Although Mitchell Hepburn had not made a public commitment to the Catholic Taxpayers' Association, many Catholics shifted their political support to the Liberals in 1934.²²

Under the barrage of lobbying from both sides, the Hepburn Government passed an awkwardly worded amendment to the *Assessment Act* which purported to provide for an adjustment of the division of corporations' taxes between public and separate schools. Attempts to apply the legislation failed and it was repealed in 1937. It was nevertheless the "first significant legislative concession since the Scott Act of 1863."²³

From the 1940s through the 1960s, enrolment in separate schools increased but, proportionately, the number of teachers who were members of religious communities (at nominal pay) declined. At the same time, teacher qualifications improved and the separate school boards had to devote a greater outlay of scarce funds to hire lay teachers.²⁴

The Royal Commission on Education in Ontario (known as the Hope Commission) deliberated from 1945 to 1950. A significant proportion of the Commission's Report was regarded as hostile to the separate school system and its restrictive suggestions were not implemented.²⁵

Financial hardship remained a pressing problem in the 1950s and 1960s. In 1963 Premier John Robarts finally introduced the Ontario Foundation Tax Plan (passed in 1964). The plan provided for additional provincial legislative grants to all boards and, particularly important to separate school boards, a system which would provide a "corporate tax adjustment grant" for all elementary school boards. The largest share of this grant would go to boards that were poor in terms of local corporate assessment.²⁶ The 1963 Corporation Tax Adjustment Grant was the result of a strong lobby by the Roman Catholic Bishops of Ontario to rectify the inequities between the separate and public school systems.

The period following 1963 saw the difference between overall per pupil revenues available to separate compared with public school boards drop from approximately 30% to 10%. Further, school boards had been restructured into large county and district boards to maximize cost efficiency. Upon the request of separate school trustees, separate schools were also reorganized and the number of separate boards was reduced from about 500 to 40.²⁷

The enactment of Bill 168, *An Act to Amend the Separate School Act*,²⁸ provided for the establishment by regulation of combined Roman Catholic schools by uniting the existing zones and any new ones established in the future where centres were in a county or a combination of counties. It provided for later alteration of boundaries within which a combined Roman Catholic Separate School zone might be formed.²⁹

The gap in funding between public and separate school boards had narrowed and was reduced further in 1978 when the Ministry of Education implemented the Mill Rate Equalization Plan. This plan meant that all school boards with the same mill rate on their equalized property assessment would receive the same funding per pupil through a combination of local property tax revenues and provincial grants.³⁰

Position of the Parties 1969-1984

Until the mid-1980s, Roman Catholic schools in Ontario generally had been receiving public funding only for their elementary school systems. Some boards, however, including the Metropolitan Toronto Separate School Board, received equivalent elementary support for students enrolled in Grades 9 and 10.³¹

During the 1960s the three political parties in the Legislative Assembly of Ontario had not assumed a position strongly in favour of extending public funding for Roman Catholic separate schools throughout the remaining secondary school grades.³² Subsequent to the 1960s, however, a consideration of changes in the funding of such schools began to occupy legislators. In November 1969 the Liberal Party endorsed extending the jurisdiction of separate school boards through to grade 12. They hoped, if elected, to

abolish grade 13. The Liberal Party also proposed to make available to separate school boards a grant system which was much closer to that applicable to public school boards. The New Democratic Party adopted a position similar to the Liberals in December of 1969.

The position of the Progressive Conservative Party, as confirmed by Premier Davis on August 31, 1971, continued to be that equality of opportunity demanded public funds be used to bring the existing separate school system as close as possible to the public school system only until grade 10. It was felt that maintaining two systems throughout high school involved a cost which the province could not afford. The Conservatives also remained unmoved by the opposition parties' advocacy for joint planning and use of facilities.

The Progressive Conservatives, however, eventually changed their position with Premier William Davis' dramatic announcement on June 12, 1984:

. . . the government's intention [is] to permit the Roman Catholic school boards to establish a full range of elementary and secondary education and, as part of the public system, to be funded accordingly. This new program will be introduced at the rate of one year of secondary education for each school year beginning September 1, 1985. This process will be accomplished in much the same way we are implementing the new special education provisions and will parallel the revised secondary school structure.

Some flexibility will be included so as to allow for a phase-in period that is in keeping with the capacity of the individual board in question.³³

By the 1985 provincial election campaign, therefore, all three parties were committed to the extension of full public funding to separate schools through all secondary school grades.

EXTENSION OF PUBLIC FUNDING THROUGHOUT SEPARATE SECONDARY SCHOOL GRADES

Bill 30

On July 4, 1985 the new Liberal minority government introduced Bill 30, an *Act to Amend the Education Act, 1986*,³⁴ to extend full public funding of Roman Catholic secondary schools through to grade 13. It also provided for the establishment of a *Planning and Implementation Commission* to guide and advise all parties on the implementation of the secondary school funding provisions and the changes that would result over a ten-year period.

Bill 30 provided that public school staff whose positions were lost as a result of the extension of funding would be offered a substantially similar position with the Roman Catholic school board. If no such position was available, the displaced staff member was to receive training assistance to qualify for an alternate position. These guarantees would apply for a ten-year period after grants were extended. Furthermore, to maintain the distinctiveness of separate schools, the Roman Catholic school board was authorized to require as a condition of employment that teachers hired by the board after the ten-year period agree to respect the philosophy and traditions of Roman Catholic separate schools in the performance of their duties.

Access to both public and separate high schools was secured for all secondary students. Pupils who were not Roman Catholic but attended a separate secondary school because a program was not available in their area or within a reasonable distance, or because of a handicap, were exempted from religious studies. In addition, students could be exempted from such studies upon written application to the school board by a parent or guardian.

Following extensive debate, Bill 30 received Second Reading and was referred to the Standing Committee on Social Development. Public hearings commenced on July 16, 1985 and concluded some four months later on November 19, 1985. Approximately 876 submissions were received at the hearings in Toronto and seven other cities.³⁵ As a

result of the Committee's consideration of the Bill, a number of amendments were proposed and approved.

Judicial Rulings on Bill 30

Bill 30 had been referred by the Minister of Education for a judicial ruling on whether it was consistent with the provisions of the Constitution of Canada, including the *Canadian Charter of Rights and Freedoms*. The Ontario Court of Appeal delivered a split decision (3:2) in February, 1986 that Bill 30 was constitutional. A further appeal to the Supreme Court of Canada was dismissed in June, 1987, the Court unanimously ruling that Bill 30 was consistent with the provisions of the Constitution of Canada, including the *Charter*.

Opponents of Bill 30 included the Metropolitan Toronto School Board, the Ontario Secondary School Teachers' Federation, a number of smaller Boards of Education, the Canadian Civil Liberties Association and various other groups. They argued the Bill in effect provided benefits on the basis of religion to a single group and that this contravened sections 2 and 15 of the *Canadian Charter of Rights and Freedoms*. These sections guarantee freedom of religion and the "right to equal protection and equal benefit of the law" without discrimination based on, among other things, religion.

Proponents of the Bill included the Ontario government, the Ontario Separate School Trustees' Association, the Ontario English Catholic Teachers' Association, the Association française des conseils scolaires de l'Ontario, the Metro Separate School Board and a number of other separate school boards. They argued that the guarantees of Roman Catholic education rights were part of the political compromise that made Confederation possible and these rights could not be revoked by provisions in the *Charter*.

The majority of the Ontario Court of Appeal held that the right of Protestants and Roman Catholics to separate schools was part of the basic compact of Confederation. Section 93 of the *Constitution Act, 1867* ensured that no law passed in relation to education "will

prejudice the rights and privileges of denominational schools enjoyed by law in 1867." Whereas in Quebec they noted section 93 had been interpreted and applied as giving rights to public funding for separate secondary schools, in Ontario this had not been the case. The majority of the Court found that Bill 30 has to be seen as "an attempt to redress a historical grievance and to remove a continuing irritant in relations with Quebec."³⁶ The Court noted in addition that, at the time of Confederation, education up to the pre-university level was being provided in separate secondary schools. Finally, the Court referred to section 29 of the *Charter* which specifically provides that nothing in the *Charter* "abrogates or derogates from any rights or privileges guaranteed by or under the Constitution of Canada in respect of denominational, separate or dissentient schools." The majority stated that this section meant that not only laws in force at the time of Confederation, but also any laws passed subsequently by a provincial Legislature "under the authority of section 93" were exempt from the equality provisions of the *Charter*.

The dissenting opinion held that the rights and privileges guaranteed to Roman Catholics by section 93 of the *Constitution Act, 1867* and section 29 of the *Charter* were limited to those which they had at the time of Confederation which, in their view, consisted of funding for elementary education only. Bill 30 they concluded, therefore, could be subject to *Charter* scrutiny. Since the Bill provided benefits on the basis of religion to one religious group only, it was in conflict with the equality provisions of the *Charter*.

The decision of the Ontario Court of Appeal on the *Reference* was appealed to the Supreme Court of Canada. In June, 1987 the Supreme Court of Canada ruled unanimously that Bill 30 was constitutional. The court held that the basic compact of Confederation with respect to education was that rights and privileges already acquired by law at the time of Confederation would be preserved and that provincial legislation could bestow additional rights in response to changing conditions. Educational rights and privileges, including those provided by Bill 30, are immune from Charter review by virtue of section 93 of the *Constitution Act, 1867*, even without section 29 of the *Charter*. While noting that special treatment for separate schools may "sit uncomfortably with the concept of equality embodied in the Charter" they argue that "it was never intended . . .

that the Charter could be used to invalidate other provisions of the Constitution, particularly a provision such as s.93 [Constitution Act, 1867], which represented a fundamental part of the Confederation compromise."³⁷

With the Supreme Court of Canada ruling in *Reference re an Act to Amend the Education Act (Ontario)*,³⁸ the controversy over the legality of providing full funding to Roman Catholic separate schools in Ontario was finally laid to rest. The funding of the higher grades of separate secondary schools had actually started almost two years earlier. While Bill 30 received Royal Assent on June 24, 1986, a Cabinet decree had allowed for the funding of Grade 11 in September, 1985, funding for Grade 12 started in 1986 and for Grade 13 in 1987.

Planning and Implementation Commission Activities

The *Planning and Implementation Commission* was set up by Order-in-Council to plan and implement changes in the governance and administration of secondary school education as a result of the extension of public funding through all Roman Catholic secondary school grades.³⁹ Subsequent Orders-in-Council have continued the Commission for the required phase-in period and it is expected to continue until July 1, 1995. The Commission's general mandate has been ". . . to provide advice to the Minister of Education on all issues relative to Bill 30 and the implementation of extension."⁴⁰

More specifically, the Commission was to provide advice to the Minister respecting the following matters:

General Areas

- the viability of the public secondary education system;
- the distinctive mission of the Roman Catholic separate secondary education system; and
- equity among school boards concerning access to finances, program breadth and availability, equipment, and resources.

Specific Areas

- the extension of Roman Catholic school boards based on the evaluation of board plans and impact statements;
- the resolution of disputes between public and Roman Catholic school boards;
- the designation of teachers;
- the accessibility of guidance and program information;
- the sharing of school facilities and services;
- funding to encourage co-operation;
- the redeployment of underutilized capital stock;
- the teaching of adults in secondary day schools;
- policy development through memoranda, regulations, or amendments to the Education Act; and
- the future role of the Commission.⁴¹

The Commission's responsibilities have included advising and assisting school boards in the implementation of Bill 30, including encouraging local solutions in resolving disputes; the formulation of policy and criteria respecting finance, governance, administration, and programs offered in the extension of Roman Catholic secondary education; and communicating such policies to boards.⁴²

The greatest activity resulting from Bill 30 occurred in the first four years from 1985 to 1989. In that time period "all but a handful of separate school boards in Ontario had extended in one or more areas."⁴³ By the end of 1991 only 18 of 60 Roman Catholic school boards had not received extended funding.⁴⁴ Further, by 1991, 14 public board of education schools had been leased by Roman Catholic separate boards of education (Metro Separate leasing 9 of this total number), 10 public board schools were being shared with Roman Catholic separate school boards, 33 public board schools had been transferred to Roman Catholic separate school boards, and 17 *en bloc* transfers of schools from public school boards to separate school boards had been arranged.⁴⁵ Finally, a total of 71 new Roman Catholic separate secondary schools had been established as of September 1992.⁴⁶

Bill 64

While public funding was extended throughout all remaining separate secondary school grades by Bill 30, differences remained in local public funding of separate and public

school boards. This was primarily due to the treatment accorded commercial and industrial property tax assessments in contrast to the treatment of residential and farm assessments.

With residential and farm property assessments, residents in a local municipality are requested to designate to which school system their support is to be directed. The local residential and farm assessment is then divided accordingly between public and separate school boards.

The division of commercial and industrial property assessments between public and separate schools was never as clear and remained unsatisfactory to many. It had been far more difficult to designate commercial and industrial assessment for separate school purposes up to that point and any undesignated assessments automatically went to the public system. The result was that separate school boards generally received a far lower proportion of the commercial and industrial assessment than the residential and farm assessment in the vicinity.

Bill 64, *An Act to amend the Education Act, 1989*, was introduced to provide for the "local" or "co-terminous pooling" of commercial and industrial assessments to assist in rectifying continuing funding inequities between public and separate schools within the same area. Bill 64, the *Education Statute Law Amendment Act, 1989*, was enacted in May 1989.⁴⁷

Section 126 of the *Education Act*⁴⁸ was amended to clearly authorize *private* corporations and partnerships to designate the whole or any part of their assessment for separate school purposes.⁴⁹ In addition, section 126a was added to provide that the assessment of a *public* corporation in a municipality was to be entered, rated and assessed for separate school purposes in the same proportion to the total assessment of the public corporation as residential and farm assessment had been rated and assessed for such purposes in the municipality.⁵⁰ If there was more than one public school board in the municipality, then the proportion to be determined was to be the proportion of the assessment in the portion of the municipality within the jurisdiction of each board.⁵¹

In other words, commercial and industrial property tax assessments and revenues were to be pooled and shared by local school boards in the same proportion as residential and farm property tax assessments and revenues. Phase-in grants over a six-year period were included in Bill 64 to cushion the anticipated impact on public boards from the loss of commercial and industrial assessment revenues.

CONCLUSION

Despite the enactment of Bills 30 and 64, complaints have persisted respecting Roman Catholic separate school boards', and in some instances French-language school boards', ability to raise funds vis-a-vis public school boards. As mentioned earlier, local funding is distributed between separate and public boards in the proportion directed by homeowners and not on a per-pupil needs basis. Where homeowners, through lack of knowledge, neglect or otherwise, fail to specifically direct their taxes to one or another board, they are deemed to be public school supporters in default. These provisions often result in public school boards receiving an inequitable share of property taxes arising out of residential and farm assessments.

In response to such concerns, the Minister of Finance indicated in 1993 that funding grants would be changed to reflect more equity on a per-pupil basis commencing in 1996.⁵² The Royal Commission on Learning, in its recently published Report (known as the Caplan-Begin Report), appears to go further than the Minister of Finance. The Royal Commission made the following recommendations to address remaining funding disparities:

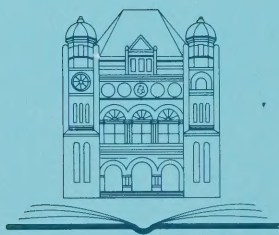
- equal per-pupil funding across the province, as well as additional money needed by some school boards for true equity, be decided at the provincial [not local] level, and that the province ensure that funds be properly allocated;
- boards be allowed to raise a further sum, no greater than 10 percent of their provincially determined budget, from residential assessment only; and
- all residential property owners be required to direct their taxes to the school system they are entitled to and wish to support, and that undirected taxes be pooled and distributed on a per-pupil basis.⁵³

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46. Ibid., Appendix, Table 8, pp. 20-21.
47. Ontario, Ministry of Education and Training, *Education Funding in Ontario 1994* (Toronto: The Ministry, 1994), p. 9; S.O. 1989, c. 65, now R.S.O. 1990, c. E.2, as amended.
48. R.S.O. 1980, c. 129, now R.S.O. 1990, c. E.2, as amended.
49. S.O. 1989, c. 65, s. 29(3) and (4) (amending s. 126 of the *Education Act*).
50. Ibid., s. 30 (adding s. 126a to the *Education Act*).
51. Ibid.
52. Ontario, Report of the Royal Commission on Learning, *For the Love of Learning, Vol. 4: Making it Happen* (Toronto: Queen's Printer for Ontario, 1994), p. 131.
53. Ibid., Recommendations 159, 160 & 161, p. 132.





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